

Juvenile Law and Payment for Juvenile Services by the State of Indiana

H.E.A. 1001, P. L. 146-2008

Delinquents at DOC

- IC 11-10-2-3 is repealed effective January 1, 2009, which requires counties to pay \$60.00 per day for juveniles committed to the Indiana Department of Correction. Amounts owed for periods before January 1, 2009 must still be paid.
- IC 11-12-2-9 is amended to remove delinquents from the chargeback provisions of the community corrections act. Effective January 1, 2009.

Children in state institutions

Amends IC 12-24-13-6 to provide DCS is responsible to pay the costs of treatment of a child, under the custody or supervision of DCS, who is placed by or with the consent of DCS in a state institution. Effective January 1, 2009.

Abortion

Amends IC 16-34-2-3 to provide if a mother, and if married, her husband, indicate in writing they do not wish to keep the child in the event an abortion results in a live birth, the child shall immediately become a ward of DCS if born alive. Effective March 19, 2008.

Mental health records

Amends IC 16-39-3-8 to provide if an emergency exists in which the mental health records of an alleged CHINS are needed as part of the preliminary inquiry, the DCS may petition the juvenile court to order the release of these records. Effective March 19, 2008.

Guardianship of minor

Amends IC 29-3-9-11 to require the DCS to investigate and report to the court about the conditions and circumstances of a minor and the fitness of the guardian or proposed guardian when ordered to do so by the court. Provides FSSA shall investigate and report to the court concerning the conditions and circumstances of a minor or an alleged incapacitated adult or protected person who is an adult and the fitness of the guardian or proposed guardian whenever ordered to do so by the court. Effective March 19, 2008.

Adoption subsidy

Adds IC 31-19-26.5 to provide the Department of Child Services (DCS) will determine eligibility for federal and state adoption subsidy programs. The adoption subsidy for children with special needs shall be paid by DCS if: (1) they have entered into a written agreement with the adoptive parent or parents, or (2) there is a final order in an administrative appeal that the adoptive parents are eligible for a subsidy. In addition, there must be sufficient funds to pay the subsidy, and other conditions must also be met. Payments in addition to the adoption subsidy may be made for medical or psychological care under certain conditions. The DCS may require reports from adoptive parents as a condition for continued subsidy payments. The subsidy may continue until the child turns 21 under certain circumstances. Effective January 1, 2009.

DCS and Regional Services Councils

- Adds IC 31-25-2-2.5 to provide the DCS Director and officers and employees of the department are not personally liable, except to the state, for an act done or omitted in connection with performance of duties under Title 31. Effective March 19, 2008.
- Amends IC 31-25-2-5 to provide each family case manager have no more than 12 active cases relating to initial assessments, including investigations of abuse or neglect, or 17 children monitored and supervised in active cases relating to ongoing services. Effective July 1, 2008.

- Adds IC 31-26-3.5 to define child welfare programs and provide applications for funding new or modification of existing child welfare programs to be submitted to the Regional Services Council and approval by the DCS director. Effective July 1, 2008.
- Adds IC 31-26-6 to require creation of regional service strategic plans by the regional services council to provide for the needs of juveniles adjudicated or alleged to be CHINS and delinquent. If the regional services council has at least 3 counties, then three judges or their designees would be members. If the region only consists of 1 or 2 counties, then one juvenile court judge or judicial hearing officer and 2 members who are designees of the judge would be members. Makes provisions for other members, including a prosecuting attorney. Plans prepared by the regional services council must be submitted to the DCS Director or designee for approval, approval with amendment, or return with further directions to the council. Requires the regional services council to meet at least quarterly. Makes provisions for proxies, quorums, attendance, publicity for the plan, and rule-making. Amends IC 31-33-4-1 to require each regional services council to prepare a plan before February 2 of each even-numbered year and submit it to the director, each juvenile court and others. Effective July 1, 2008.

Custody, modification and guardianship

- Amends IC 31-14-10 to remove the authority of a court to appoint a caseworker to investigate support, custody and parenting time in paternity cases, but continues the authority of courts to probation officers to conduct these investigations. Effective January 1, 2009.
- Amends IC 31-17-2-12 to provide DCS is authorized to investigate and report custodial arrangements in custody matters only if the child is subject to a CHINS case. Effective January 1, 2009.
- Amends IC 31-25-2-7 to provide that DCS is not authorized to investigate, report or monitor child custody or modification proceedings, conduct home studies or otherwise participate in guardianship proceedings under IC 29-3 unless the juvenile court has jurisdiction over the guardianship under IC 29-3-2-1(c) or IC 31-30-1-1 (10). Provides the DCS is responsible for certifying and providing grants to the Youth Service Bureaus and Project Safe Program. Effective July 1, 2008.

Child protection team

Amends IC 31-33-3-1 to increase the child protection team from 11 to 13 members. Effective July 1, 2008.

CHINS

- **Services ordered before placement.** Amends IC 31-34-4-2 to require, if a CHINS is taken into custody under court order and the court orders out-of-home placement, the DCS rather than the court is responsible for that placement and care. Adds IC 31-34-4-7 to require the juvenile court, at any time before the entry of a dispositional decree or before ordering any CHINS placement or service, to submit the proposed order to DCS if the service, program or placement does not agree with the DCS recommendation. The DCS shall have 3 days to submit a report approving or disapproving the service or placement. If the court's recommended service or placement is not approved, the DCS may recommend an alternative. If the recommendation of the DCS is not accepted, the court may enter an order requiring the DCS to provide the placement or service and specifically state the reasons for not accepting the DCS recommendations. The DCS may then appeal this order under trial or appellate rules to be decided in an expeditious manner. If the DCS prevails on appeal, the DCS shall pay the following costs of programs or services incurred before the date of the final decision: (1) any program or services implemented during the appeal, other than the cost of an out-of-home placement, and (2) any out-of-home placement after entry of the court order of placement, if the court includes written findings that the placement is an emergency to protect the health and welfare of the child. If the court has not made written findings that the placement is an emergency, then the county where the juvenile court is located is responsible for the cost of the placement. Effective January 1, 2009.

- **Required findings.** Amends IC 31-34-5-3 to provide the juvenile court shall include in any order approving or requiring detention of a child all findings required by Title IV-E and 45 CFR 1356.21 as a condition of eligibility of a CHINS for assistance using the language approved and recommended by the Judicial Conference of Indiana. Effective January 1, 2009.
- **Informal Adjustment.** Amends IC 31-34-8-1 to provide if a court does not approve a program of informal adjustment it must state the reasons for the denial. If the court does not approve or deny the informal adjustment within 10 days of its submission, it is considered approved. If the court sets a hearing and the hearing is not concluded and the action taken to grant or deny the informal adjustment does not occur within 30 days of its submission to the court, the program is considered approved. Effective July 1, 2008.

Amends IC 31-34-8-6 and 7 to permit an extension of an informal adjustment only up to 3 months rather than 6 months. If an informal adjustment program is approved, the supplemental report by DCS shall be filed 8 months after implementation of the program of informal adjustment. Effective July 1, 2008.

- **Child testimony.** Amends IC 31-34-14-4 to reduce the notice period from 20 to 7 days that the DCS attorney must give before proceedings in which testimony of a child will be given outside the courtroom. Effective July 1, 2008.
- **Copy of case plan.** Amends IC 31-34-15-3 to require a copy of the completed case plan to be sent to an agency having the legal responsibility or authorization to care for, treat, or supervise the child, in addition to the child's parent, guardian or custodian not later than ten (10) days after the plan's completion. Effective July 1, 2008.
- **Parental participation.** Amends IC 31-34-16-1 to provide only the DCS attorney and GAL/CASA may file a parental participation petition in CHINS cases. Effective July 1, 2008.
- **CHINS disposition, findings, and appeal.** Adds IC 31-34-19-6.1 which provides in a CHINS case, a juvenile court must consider the recommendations for care, treatment and rehabilitation of the child from the following:

(1) Department of Child Services (DCS), (2) the parent, (3) the guardian, (4) the custodian,	(5) the GAL/CASA, (6) the foster parent, (7) the caretaker, or (8) the court.
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If the court agrees with the DCS recommendations, the court shall enter a disposition with its findings. If the juvenile court does not accept the DCS recommendations, and wishes to consider other recommendations, then the dispositional hearing shall be continued for not more than seven (7) business days after service of notice of the juvenile court's determination. DCS shall consider the recommendations of the other entities above and submit a supplemental predispositional report.

If the court accepts the DCS supplemental recommendations, the court may adopt those as its findings and enter a dispositional decree. The court shall accept the supplemental recommendations, unless the court finds the recommendation is unreasonable based on the facts and circumstances of the case or contrary to the welfare and best interests of the child. The findings must be in writing and shall specifically state why the final recommendation of the DCS is not being accepted. The DCS may then appeal this order under trial or appellate rules to be decided in an expeditious manner.

If the DCS prevails on appeal, the DCS shall pay the following costs of programs or services implemented during the appeal before the date of the final decision: (1) any programs or services implemented during the appeal other than the cost of an out-of-home placement, and (2) any out-of-home placement ordered after the dispositional decree or modification order, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child. If the court has not made written findings that the placement is an emergency, then the county where the juvenile court is located is responsible for the cost of the placement.

Effective January 1, 2009.

Out of state CHINS placements

Amends IC 31-34-20-1 to provide the juvenile court may not place a child in a home or facility outside Indiana: (1) without approval of the DCS, or

(2) without written findings based on clear and convincing evidence that the out-of-state placement is appropriate because:

- (a) there is not a comparable in state placement or the location of the home, or
- (b) the home or facility is within 50 miles of the county of residence of the child.

Effective January 1, 2009.

Additional CHINS provisions

- Amends IC 31-34-20-5 to permit the DCS in addition to the juvenile court, to place a child in a public school as part of making a legal settlement determination. Effective July 1, 2008.
- Amends IC 31-34-23-3 to require the juvenile court to hold a hearing on a motion for an emergency change in the child's residence, if requested. Effective July 1, 2008.
- Amends IC 31-34-25-1 to permit only the DCS attorney and GAL/CASA to file a petition to require a person to refrain from direct or indirect contact with the child. Effective July 1, 2008.

Termination of Parental Rights

- Amends IC 31-35-2-4.5 to require the DCS to be joined as a party to a termination case if the termination petition is filed by the CASA or GAL. Also, permits only relatives and other persons serving in the capacity as legal guardian to file a motion to dismiss the termination petition. Effective July 1, 2008.
- Amends IC 31-35-4-4 to reduce the notice period from 20 to 7 days that the DCS attorney must give before proceedings in which a statement or videotape evidence of a child will be given. Effective July 1, 2008.

DELINQUENTS

- **Services ordered before placement.** Adds IC 31-37-5-8 to require the juvenile court to submit a recommendation for services, programs, or placement of a delinquent child to DCS prior to:
 - (1) entry of a dispositional decree,
 - (2) approval of an informal adjustment, or
 - (3) approval of an out-of-home placement recommended by probation or the court which would be payable by DCS and has not been approved by DCS.

Within 3 business days the DCS shall submit a report to approve or disapprove of the service, program or out-of-home placement.

If the juvenile court makes written findings an emergency exists requiring an out-of-home placement, the court may order implementation of the placement without complying with the procedure in this section. After entry of this order, the juvenile court shall submit a copy to the DCS for consideration of possible modification or alternatives to the placement.

If the DCS approves of the service, program, or placement, the appropriate order may be entered. If DCS does not approve, DCS may recommend an alternative service, program or placement. The juvenile court shall accept the recommendations of the DCS unless the court finds the recommendation is unreasonable based on the facts and circumstances of the case, or contrary to the welfare and best interest of the child. The findings must be in writing and shall specifically state why the final recommendation of the DCS is not being accepted. The DCS may appeal this order under trial or appellate rules to be decided in an expeditious manner.

If the DCS prevails on appeal, the DCS shall pay the following costs of programs or services implemented during the appeal before the date of the final decision: (1) any programs or services

implemented during the appeal and other than the cost of an out-of-home placement, and (2) any out-of-home placement ordered after the dispositional decree, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child. If the court has not made written findings that the placement is an emergency, then the county where the juvenile court is located is responsible for the cost of the placement.

Effective January 1, 2009.

- **Required findings for delinquents.** Amends IC 31-37-6-6 to provide the juvenile court shall include in any order approving or requiring temporary detention of a child taken into custody all findings required by Title IV-E and 45 CFR 1356.21 as a condition of eligibility of a delinquent for assistance using the language approved and recommended by the Judicial Conference of Indiana. Effective January 1, 2009.
- **Status delinquents.** Amends IC 31-37-7-1 to provide a status delinquent may not be held, in a shelter care facility, a forestry camp or a training school that houses persons charged with, imprisoned for, or incarcerated for crimes. Effective July 1, 2008.
- **Preliminary Inquiry for delinquents.** Amends IC 31-37-8-2 to require the preliminary inquiry to include identification of any emergency situation that prevents reasonable efforts to avoid removal, whether it is in the best interests of the child to be removed from the home environment, and whether remaining in the home would be contrary to the health and welfare of the child. Amends IC 31-37-8-6 to provide only the prosecuting attorney shall decide whether to file a petition. Effective July 1, 2008.
- **Informal Adjustments for delinquents.** Amends IC 31-37-9-1 to require the intake officer to submit a copy of a proposed informal adjustment to the DCS before submitting it to the court if the DCS would be required to pay for any services under it. The DCS may submit its comments and recommendations to the intake officer and the juvenile court. Effective January 1, 2009.

Amends IC 31-37-9-2 to require written consent from DCS before any services to the family will be paid by the DCS in an informal adjustment. Effective January 1, 2009.

Amends IC 31-37-9-7 to reduce the extension of an informal adjustment from 6 to 3 months. Effective July 1, 2008.

- **Parental participation.** Amends IC 31-37-15-1 to remove the authority of DCS or a DCS caseworker to sign and file a parental participation petition in a delinquency case. Effective July 1, 2008.
- **Predispositional report (PDR).** Amends IC 31-37-17-1 to require a PDR, prepared by a probation officer, to include information needed by DCS to determine eligibility for Title IV-E and a statement of DCS's concurrence with or DCS's alternative proposal to the PDR if there is a recommendation for a placement out-of-home other than a secure detention facility, or if the services are payable by DCS. Effective January 1, 2009.

Adds IC 31-37-17-1.4 to provide if the PDR includes a recommendation payable by DCS, the probation officer shall refer the completed report to DCS within a reasonable time for review. The DCS may either concur or offer an alternative proposal to the probation officer. Effective January 1, 2009.

Amends IC 31-37-17-4 to require a risk and needs assessment for the child in the PDR if the DCS will be responsible for payment of any programs, services or placement under the PDR. Effective January 1, 2009.

- **Placement in state institutions.** Amends IC 31-37-18-5 to provide that the court may not release the DCS from obligations to the child for voluntary mental health treatment under IC 12-26-3 until the earlier of the discharge of the child or the date the parent, guardian or custodian approved by the court assumes the obligations. Effective July 1, 2008.
- **Delinquency findings, disposition and appeal.** Adds IC 31-37-18-9 to provide in a delinquency case that a juvenile court must accompany its dispositional findings concerning the approval, modification or rejection of the recommendations in the PDR with findings about efforts made, if the child is removed,

to prevent the child's removal or reunite the child with the child's parent, guardian or custodian. The findings must also include family services which were offered to the child or the child's parent, guardian or custodian in addition to the court's reasons for the disposition.

If the juvenile court does not concur with the PDR and does not follow the DCS alternative recommendations, the court shall accompany the dispositional decree with written findings that the DCS recommendation is unreasonable based on the facts and circumstances of the case or contrary to the welfare and best interest of the child. The DCS may then appeal this order under trial or appellate rules to be decided in an expeditious manner.

If the DCS prevails on appeal, the DCS shall pay the costs of programs or services implemented during the appeal before the date of the final decision: (1) Any programs or services implemented during the appeal other than the cost of an out-of-home placement. (2) Any out-of-home placement ordered after the dispositional decree, if the court has made written findings that the placement is an emergency required to protect the health and welfare of the child. If the court has not made written findings that the placement is an emergency, then the county where the juvenile court is located is responsible for the cost of the placement.

Effective January 1, 2009.

- **Responsibility for placement.** Amends IC 31-37-19-1 to provide if a delinquent is removed from child's home and placed in a foster family home or another facility, the juvenile court shall approve the permanency plan, find whether reasonable efforts were made to prevent or eliminate the need for removal, designate responsibility for the placement and care of the child with the probation department, and find whether removal is in the best interests of the child. If the dispositional decree removes a child from the home or awards wardship of the child to a person other than the department or shelter care facility and is the first court order in the delinquency proceeding to remove the child from the child's parent, guardian or custodian, the court shall include findings required for Title IV-E purposes. Effective January 1, 2009.
- **Case plan required.** Adds IC 31-37-19-1.5 to require the completion of a case plan by the probation department if the child is placed in an out-of-home residence or facility that is not a secure detention facility no later than 60 days after the child's first placement or the date of a dispositional decree. Provides for development and information to be included in the case plan, and its review and update at least every 180 days. Requires the case plan to be sent, in addition to the child's parent, guardian, or custodian, to an agency having the legal responsibility or authorization to care for, treat, or supervise the child not later than ten (10) days after the plan's completion. Effective July 1, 2008.
- **Placement outside Indiana.** Amends IC 31-37-19-3 to prohibit placement of a delinquent child in a home or facility that is not a secure detention facility and is located outside Indiana unless:
 - (1) the placement is approved by the DCS, or
 - (2) the court makes written findings based on clear and convincing evidence that the out-of-state placement is appropriate because:
 - (a) there is not a comparable in-state placement, or
 - (b) the location of the home or facility is within 50 miles of the county of residence of the child.Effective January 1, 2009.
- **Supervision.** Amends IC 31-37-19-5 to provide the juvenile court may not order supervision of a crime delinquent by the DCS as a condition of probation. Effective July 1, 2008.

Amends IC 31-37-19-6 to provide the juvenile court may not order wardship of a crime delinquent to DCS. If the juvenile court removes a child from the child's home or awards wardship to a person, other than DCS, or to a shelter care facility and is the first court authorizing the removal, the court shall include findings required for Title IV-E purposes. Effective January 1, 2009.

- **Criminal record check.** Amends IC 31-37-19-6.5 to provide a juvenile probation officer is not required to conduct a criminal history check on persons residing in the home of the child if the probation officer is considering only an out-of-home placement to an entity or facility that is not a residence or a facility licensed by the state or the placement is undetermined when the PDR is prepared. Effective July 1, 2008.
- **Reviews.** Amends IC 31-37-19-17.4 to permit a court to order psychological counseling for crime delinquents who commit various sex offenses subject to the concurrence or offer of an alternative by DCS. Applies the findings and appeal procedures under IC 31-37-18-9 to the modification statute. Effective January 1, 2009.

Amends IC 31-37-20-2 to require reviews of dispositional decrees every 6 months or more often if ordered by the court. This review must determine whether the probation department has made reasonable efforts to finalize a permanency plan for the child if one is required. Effective July 1, 2008.

Amends IC 31-37-20-3 to require a jurisdictional review of the dispositional decree every 12 months, including the permanency plan, if applicable. Effective July 1, 2008.

Amends IC 31-37-21-1 to include in the progress report progress made in implementing the dispositional decree or finalizing another permanency plan as approved by the court. Effective July 1, 2008.

- **Modification.** Amends IC 31-37-22-3 to require the juvenile court to hold a hearing on a motion for an emergency change in the delinquent child's residence and, if any modification would require payment by DCS, require the concurrence or offer of an alternative by DCS. Applies the findings and appeal procedures under IC 31-37-18-9 to the modification statute. Effective January 1, 2009.

Costs of CHINS and Delinquents

- Adds IC 31-40-1-1.5 to define the costs of secure detention. Effective January 1, 2009.
- Amends IC 31-40-1-2 to require the DCS to pay for the costs of any child services provided by or through the DCS and pay the cost of returning a child under the Interstate Compact on Juveniles.
 - Provides the DCS is not responsible for the costs of secure detention.
 - Provides the DCS is not responsible for the costs of child services if the juvenile court has not entered the required findings and the DCS has determined the child otherwise meets the Title IV-E eligibility requirements.
 - In all cases, if the juvenile court orders services, programs or placements that are not eligible under Title IV-B or Title IV-E and are not recommended or approved by the DCS, the DCS is not responsible to pay the costs of those services, programs or placements.
 - The DCS is only responsible for costs of out-of-state housing or services for the child if the placement complies with IC 31-34-20-1(b) or IC 37-19-3(b).
 - The DCS is not responsible for costs for any delinquent under a dispositional decree if the probation officer did not submit to DCS information related to determination of eligibility of the child for Title IV-E.
 - If the DCS is not responsible for costs of the services, programs or placement ordered for a child, the county in which the CHINS or delinquency was filed is responsible for costs.

Effective January 1, 2009.

- Adds IC 31-40-1-2.5 to provide if a child is a CHINS, and the child commits a crime delinquent act, the DCS may, by agreement with the probation department of the juvenile court, pay the cost of services for the child while the child is in secure detention. Indicates what terms, at a minimum, must be in that agreement. Effective January 1, 2009.
- Amends IC 31-40-1-3 regarding financial responsibility to include a participant in an informal adjustment program provided by DCS. Requires the court to order repayment unless the court makes a specific finding that the parent or guardian is unable to pay or justice would not be served by ordering payment. Effective January 1, 2009.

- Amends IC 31-40-1-6 to permit the DCS to contract with the prosecutor for enforcement and collection of any parental reimbursement obligation in the county where the services were ordered or where the obligor resides. Effective January 1, 2009.

Other provisions

- Removes numerous provisions permitting the prosecuting attorney to act in CHINS or termination cases; removes provisions permitting the Prosecutor to act in delinquency cases.
- Removes numerous references to wardship by the DCS in the delinquency statutes. Changes numerous references from the county department to DCS.
- Amends IC 6-3.5-6-1.1 to define welfare allocation amount for tax formula calculation.
- Adds a noncode provision to prohibit a county from imposing a property tax levy after December 31, 2008, for reimbursement to the DOC under IC 11-10-2-3 for the costs of housing delinquents. The cost of keeping delinquent offenders to the extent that the costs are for services delivered after December 31, 2008, is transferred from the county to the state. This also includes the cost of an institution or a facility in Indiana for providing educational services that, before January 1, 2009, were chargeable to a county family and children's fund or a county. All accounts accruing before January 1, 2009, shall be forwarded to the county auditor for payment by March 16, 2009. A county and DOC may enter into an agreement to resolve any issues concerning outstanding balances. Effective January 1, 2009.
- Adds a noncode provision to abolish the medical assistance to wards account and appropriates \$12,190,358 from the state general fund to the FSSA to pay this obligation from July 1, 2008 until June 30, 2009. Effective retroactive to January 1, 2008.
- Adds a noncode provision to not permit a county to impose a property tax levy under IC 12-19-7 for an assessment after January 15, 2008. Abolishes each county's family and children's fund and appropriates \$239,980,502 from the state general fund to the DCS to pay for child services after December 31, 2008 to June 30, 2009. Permits augmentation of this fund. Requires counties to pay outstanding obligations for debts that would have been payable from this fund before January 1, 2009. Any obligation of parents to reimburse a county is not terminated. Notwithstanding any other provision, payment for child services (as defined in IC 31-9-2-17.8 (as added by this act)) shall be made not later than sixty (60) days after the date the DCS receives the service provider's invoice together with a properly prepared claim voucher and documentation. Effective retroactive to July 1, 2007.
- Adds a noncode provision to not permit a county to impose a property tax levy under IC 12-19-7.5 for an assessment after January 15, 2008. Abolishes the children's psychiatric residential treatment services fund and appropriates \$10,211,920 to pay from the state general fund to the FSSA to pay for services under this fund beginning after December 31, 2008, and ending June 30, 2009. Permits augmentation of this fund. Requires counties to pay outstanding obligations for debts that would have been payable from this fund before December 31, 2008. Any obligation of parents to reimburse a county is not terminated. Effective retroactive to July 1, 2007.